

Residential Tenancies Tribunal

Decision 19-0192-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on April 1, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing. The landlord, [REDACTED], hereafter referred to as landlord2 was not present at the hearing. He was represented by [REDACTED].
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$1550.00 to \$1335.56 and the claim for advertising cost from \$175.00 to \$321.40.
5. The tenants were not present or represented at the hearing. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
6. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 10 clear days prior to the hearing date, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

7. The affidavits of service submitted by the landlord show that the notices of this hearing were electronically sent on March 13, 2019 and the tenants have had 18 days to provide a response. Landlord1 presented copies of text messages between herself and the tenants prior to serving the Application for Dispute Resolution. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

8. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$1335.56;
 - b. Late fees - \$75.00;
 - c. Advertising Costs - \$321.40
 - d. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 15, 18, 19, 31, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of rent - \$1335.56

11. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

12. Landlord1 testified that the tenants moved into the unit on July 1, 2018 for a one year term (LL #1) with rent set at \$775.00 per month due on the 1st of each month. The tenants paid the rent for the months of July 2018 – January 2019. On January 9, 2019, landlord1 received a text message from the tenants stating they were moving out on January 9, 2019. She sent a text message back to the tenants telling them they cannot leave. They have signed a lease for a fixed term. She said she told them she would let them out of the lease if she was able to re-rent the unit.

13. Landlord1 further testified that she posted an ad on Kijiji on January 12, 2019. Her first showing was on January 14, 2019. When she went into the unit on January 14, 2019 the unit was empty and she found a termination notice dated January 9, 2019 (LL #2).
14. Landlord1 testified that on January 24, 2019 she received a second termination notice (LL #3) under section 23, interference with peaceful enjoyment that the tenants were leaving on January 30, 2019. The notice was sent by a text message. She said she told the tenants that they did not have grounds to terminate the tenancy.
15. Landlord1 testified that she paid Kijiji to have the ad posted on the top page on January 12 and 18, 2019, February 5 and 19, 2019 and March 3, 2019. She also paid to bump the ad up to the top page on January 31, 2019, February 3, 10, 16 and 21, 2019. She re-rented the unit on/or about March 23, 2019 for \$600.00 per month.

Analysis

16. I have reviewed the testimony and evidence of landlord1 and I find the tenants signed a term agreement for the period July 1, 2018 – July 2, 2019. The tenants gave a termination notice on January 24, 2019 to vacate on January 30, 2019 under section 23, interference with peaceful enjoyment. The tenants did not attend the hearing to provide evidence to support the claim for terminating the tenancy on the grounds of interfering with peaceful enjoyment. The tenants are required to give at least a two month notice before the end of the term to terminate the tenancy as required under section 18(1)(c) of the Act.
17. Further, the landlords tried to mitigate their losses as they posted an ad on Kijiji on January 12, 2019. They paid to have the ad on the front page and to bump up the ad to the top page from January 18 – March 3, 2019. The unit was re-rented on March 23, 2019 for \$600.00 per month. Rent owing for March 1 – 22, 2019 would be \$560.56 ($\$775.00 \times 12 \text{ months} = \$9300.00 \div 365 \text{ days} = \$25.48 \text{ per day} \times 22 \text{ days} = \560.56)

Decision

18. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for February 2019.....\$775.00
 - b. Rent owing for March 1 – 22, 2019\$560.56
 - c. Total arrears.....\$1335.56

Issue 2: Late fees - \$75.00

Landlord Position

19. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as they have not received any rent since January 2019.

Analysis

20. The rental arrears has been established in paragraph 18 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since February 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

21. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of advertising cost - \$321.40

Landlord Position

22. Landlord1 testified that they incurred a cost of \$321.40 to advertise the unit for rent on Kijiji for the period January 12 – March 3, 2019. Landlord1 said they paid to have the ad put on the top page and to have it bumped up to the top page on Kijiji. Landlord1 presented copies of the statements from Kijiji showing the dates and the amount charged for each date (LL #7).

Analysis

23. I have reviewed the testimony and the evidence of landlord1 and I find the landlords incurred cost to advertise the unit in order to mitigate their losses.

Decision

24. The landlords' claim for payment of advertising costs succeeds in the amount of \$321.40.

Issue 4: Application for Security Deposit

25. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes

to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

26. The landlord testified a \$387.00 security deposit was paid in June 2018.

Analysis

27. A security deposit was paid in June 2018. As the landlords have been successful in their claim for the payment of rent, late fees and payment of advertising costs, they shall retain the \$387.00 security deposit as outlined in this decision and order.

Decision

28. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses - \$20.00

29. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

30. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

31. The costs the landlord incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


32. The tenants shall pay the landlords' hearing costs in the amount of \$20.00.

Summary of Decision

33. The landlords are entitled to the following:

a) Payment of rent	\$1335.56
b) Late fees	\$75.00
c) Payment of advertising costs.....	\$321.40
d) Hearing expenses	<u>\$20.00</u>
e) LESS: Security deposit	<u>(\$387.00)</u>
f) Amount owing to the landlord	\$1364.96

June 26, 2019
Date


Residential Tenancies Section